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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,718	06/17/2002	Gunther Spatz	2168.GLE.PT	2833

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07/22/2004

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EXAMINER

SMALLEY, JAMES N

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 07/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/070,718	Applicant(s) SPATZ, GUNTHER	
	Examiner James N Smalley	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 March 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Objections

1. Claim 29 is objected to because of the following informalities: "clap" should be changed to "cap." Appropriate correction is required.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "shaping tool that shapes the metal closure cap" of claim 25 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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4. Claims 25, 29 and 45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 25 and 29, it is unclear how the cap is shaped by a metal shaping tool. There is insufficient support in the Specification for such an embodiment.

Regarding claim 45, it is unclear how the webs (30b) extend above the height of the encircling wall (13).

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 36-39, 41-44 and 46-47 are rejected under 35 U.S.C. 102(b) as being anticipated by Kroenert US 3,057,501.

Kroenert '501 teaches a bottle cap construction, with a crown cap (2) and insert (1) press fit into a bottle neck, with a sealing web (9). The sealing cap has a bottom, encircling wall (8) and flange (10). The sealing cap has a bent-down border and encircling annular wall (10), best seen in fig. 4, first base surface (4) facing the interior of the container, second base surface (7) extending away from the first surface at an angle.

7. Claims 36-37, 39-41, 43-45, 47 and 49-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilde US 5,884,788.

Wilde '788 teaches a dual container closure, comprising a sealing device with a sealing cap (32) and a separate closure cap (20). The sealing cap comprises a first base surface (unlabeled; read as the flat central section), a second base surface (unlabeled; read as the downwardly-angled portion immediately adjacent this first section), encircling wall (unlabeled; read as the vertically-oriented portion in contact with the container interior wall) and webs (66)

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extending above the height of the encircling wall. In fig. 6, an embodiment is disclosed teaching a sealing liner, and consequently teaching the sealing cap being formed of two bonded materials.

The closure cap contains protrusions (64) which retain the sealing cap.

8. Claims 36-44 and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Collins US 3,788,510.

Collins teaches a sealing cap (14) and overcap (22). Sealing cap (14) comprises a press fit including a web (49), bottom (46), encircling wall (41) and flange (42) with a bent-down border and encircling wall (44). Apex (45) comprises the first base surface and portion (46) comprises the second base surface, extending from the first base surface at an angle. Closure cap (22) further comprises a protrusion (31) for retaining the liner.

9. Claims 36, 39-42 and 47-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller US 6,044,994.

Miller '994 teaches a dual closure comprising a sealing cap (44) and overcap (14). The sealing cap is disclosed as capable of being formed of a variety of materials including plastic or foil, in col. 3, lines 16-18.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 22-25, 27, 31-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downs et al. US 3,494,094 in view of Wheaton US 3,040,493.

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Downs '094 teaches a container closure with a liner, and discloses in col. 3, lines 7-15, that the dust inserts are sterilized, and then applied to a filled bottle container, before being capped with a cover cap.

Downs '094 does not teach the cap applied to the container, and then cleaning the container in the mouth region.

Wheaton '493 teaches a method of cleaning the mouth region of a filled container, comprising the use of a mouth cover (26) to protect the filled contents of the container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to sterilize the insert of Downs '094, placing it on the container, and then cleaning it, as suggested by the method disclosed by Wheaton '493, motivated by the benefit of cleaning the neck and the insert in one complete step.

12. Claims 22-25, 27 and 31-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wheaton US 3,040,493 in view of Downs et al. US 3,494,094.

Wheaton '493 teaches a method of cleaning the mouth region of a filled container, comprising the use of a mouth cover (26) to protect the filled contents of the container.

Wheaton '493 does not disclose the cover being an insert, and covered with an over cap.

Downs '094 teaches a bottling method comprising the use of a dust cap, presumably to prevent dust from entering the container during the bottling process, and further discloses in col. 3, lines 7-15, that the dust cap inserts are sterilized, and then applied to a filled bottle container, before being capped with a cover cap.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the mouth cover (26) of Wheaton '493, providing the bottles with a dust cap as taught by Downs '094, motivated by the benefit of a dust cover which can then be used as a container over cap liner.

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13. Claims 26 and 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downs et al. US 3,494,094 in view of Wheaton US 3,040,493 as applied to claim 22 above, and further in view of Mumford US 3,564,805.

Downs '094 does not teach a threaded cap.

Mumford '805 teaches telescoping an overcap onto a dust-cap/liner, after filling, and further teaches in col. 3, lines 58-60, that threaded overcaps ("roll-on type caps") are equivalent to crown caps.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the threaded cap of Downs '094, providing the threaded cap of Mumford '805, motivated by the benefit of allowing a user to remove the cap without a cap-removing tool.

14. Claims 26 and 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wheaton US 3,040,493 in view of Downs et al. US 3,494,094 as applied to claim 22 above, and further in view of Mumford US 3,564,805.

Wheaton '493 does not teach a threaded cap.

Mumford '805 teaches telescoping an overcap onto a dust-cap/liner, after filling, and further teaches in col. 3, lines 58-60, that threaded overcaps ("roll-on type caps") are equivalent to crown caps.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the threaded cap of Wheaton '493, providing the threaded cap of Mumford '805, motivated by the benefit of allowing a user to remove the cap without a cap-removing tool.

15. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Downs et al. US 3,494,094 in view of Wheaton US 3,040,493 as applied to claim 22 above, and further in view of Gustafsson et al. US 6,351,924.

Downs '094, as modified, does not teach the use of a drying tool.

Gustafsson '924 teaches a bottling method with a drying step, and teaches in col. 3, lines 52-54 the benefit of the drying action is for "removing condensed residues of sterilizing agent."

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to dry the container of Downs '094, after cleaning, as taught by Gustaffson '924, motivated by the benefit of removing condensed residues of cleaning agent.

16. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wheaton US 3,040,493 in view of Downs et al. US 3,494,094 as applied to claim 22 above, and further in view of Gustafsson et al. US 6,351,924.

Wheaton '493, as modified, does not teach the use of a drying tool.

Gustafsson '924 teaches a bottling method with a drying step, and teaches in col. 3, lines 52-54 the benefit of the drying action is for "removing condensed residues of sterilizing agent."

It would have been obvious to one having ordinary skill in the art at the time the invention was made to dry the container of Wheaton '493, after cleaning, as taught by Gustaffson '924, motivated by the benefit of removing condensed residues of cleaning agent.

Response to Arguments

17. Applicant's arguments with respect to claims 22-50 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US 6,341,472

US 4,896,781

US 6,164,472

US 3,930,589

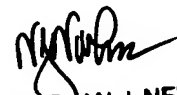
Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 9-7:30, Alternate Fri 9-5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns


NATHAN J. NEWHOUSE
PRIMARY EXAMINER
7/21/04